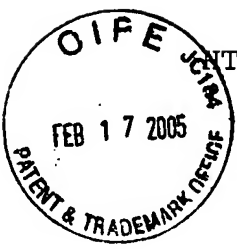


IFW



INT-03-025/031

February 14, 2005

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Attn: Art Unit 2818 - Phuc T. Dang
From: George O. Saile, Reg. No. 19,572
28 Davis Avenue
Poughkeepsie, N. Y., 12603

Subject: | Serial No.: 10/849,310 05/19/04 |
Cheng T. Horng et al.
A NOVEL BUFFER (SEED) LAYER FOR
MAKING A HIGH-PERFORMANCE MAGNETIC
TUNNELING JUNCTION MRAM

|_ Art Group: 2818 Phuc T. Dang _|

RESPONSE TO RESTRICTION REQUIREMENT

This is in response to the Restriction or Election Requirement in the Office Action dated 02/01/05. In that Office Action, restriction was required to one of two stated

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on February 15, 2005.

Stephen B. Ackerman, Reg.# 37761

Signature/Date Sg RLP 2/15/05

Inventions under 35 U.S.C. 121. The Inventions stated are Group I - Claims 1-10 and 21-29 to a magnetic tunneling junction (MTJ) and a tunneling magnetoresistive (TMR), classified in Class 257, subclass 295 and Group II-Claims 11-20 and 30-38 to a process, classified in Class 438, subclass 3.

Applicant provisionally elects to be examined the Invention described by the Examiner as Group II - Claims 11-20 and 30-38 drawn to a process classified in Class 438, subclass 3. This election is made with traverse of the requirement under 37 C.F.R.1.143 for the reasons given in the following paragraphs.


The Examiner is respectfully requested to reconsider the Requirement for Restriction given in the Office Action. The Examiner gives the reason for the distinctness of the two inventions as (1) that the process as claimed can be used to make other and materially different products or (2) that the product as claimed can be made by another and materially different process (MPEP 806.05(f)). However, upon reading the product Claims against the process Claims one can readily see that the product Claims are directed to "a magnetic tunneling junction (MTJ) device in an MRAM configuration and a tunneling magnetoresistive (TMR) read head configuration" and the process Claims are directed to "a method of forming a magnetic tunneling junction (MTJ) MRAM device with an ultra-thin barrier layer

of high smoothness and breakdown voltage and a method of forming a tunneling magnetoresistive (TMR) read head with an ultra-thin tunneling barrier layer of high smoothness and breakdown voltage", it is necessary to obtain claims in both the product and method claim language. The method Claims necessarily use the product and vice versa. The field of search must necessarily cover both the method class/subclass 438/3 and products class 257/295 in addition to other related Classes and subclasses to provide a complete and adequate search. The fields of search for the Group I and Group II inventions are clearly and necessarily co-extensive. The Examiner's suggestion that "the issues of method and product claims are divergent. Furthermore, there may be some overlap in the searches of the two groups, but there is no reason to believe that the searches would be identical. Therefore, based on the additional work involved in searching and examination of the two inventions together, restriction of distinct inventions is clearly proper", is very speculative and really has nothing to do with the Claims as presented in this Patent Application. Further, it is respectfully suggested that these reasons are insufficient to place the additional cost of a second Patent Application upon the Applicants. Therefore, it is respectfully requested that the Examiner withdraw this restriction requirement for these reasons.

HT-03-025/031

Withdrawal of the Restriction Requirement and the
Allowance of the present Patent Application is requested.

Sincerely,


Stephen B. Ackerman, Reg. #37761